

RCRA REVISION CHECKLIST 66

Land Disposal Restrictions; Correction to the
First Third Scheduled Wastes
54 FR 36967
September 6, 1989
as amended on June 13 1990, at 55 FR 23935
(HSWA Cluster II)

Notes: 1) This is a correction and clarification of 53 FR 31138 (August 17, 1988) and 54 FR 18836 (May 2, 1989) addressed by Revision Checklists 50 and 62 which cover the First Third Scheduled Wastes. As such, States which are not yet authorized for these checklists are encouraged to apply for Revision Checklist 66 at the same time the provisions in Revision Checklists 50 and 62 are applied for. States already authorized for Revision Checklists 50 and 62 requirements are encouraged to adopt the corrections addressed by Checklist 66 as quickly as possible.

2) The following Part 268 sections are not delegable to States because of the national concerns which must be examined when decisions are made relative to them: 268.5 (case-by-case effective date extensions); 268.42(b) (application for alternate treatment method); and 268.44 (variance from a treatment standard). "No migration" petitions under 268.6 will be handled by EPA, even though States may be authorized to grant such petitions in the future. States have the authority to grant such petitions under RCRA Section 3006 because such decisions do not require a national perspective, as is the case for decisions under 268.5, 268.42(b) or 268.44. However, EPA has had few opportunities to implement the land disposal restrictions and expects to gain valuable experience and information from reviewing "no-migration" petitions.

3) In the past, the nondelegable sections/paragraphs of the LDR regulations have been omitted from the LDR checklists because States could not assume the authority for them. However, this procedure has led to confusion among the States on how to handle the sections/paragraphs in their code. For this reason, the Agency has decided to include these nondelegable sections on the LDR checklists. To differentiate these sections from the delegable portions of the LDR restrictions, asterisks precede (a single row) and follow (a double row) each non-delegable section. If States have already filled out a version of Revision Checklist 66 which does not include the nondelegable sections, they need not fill out a revised version containing these sections. This change in format was made only to improve clarity.

The Agency suggests that States incorporate the nondelegable portions of the LDR regulation into their regulations because this incorporation aids the regulated community in knowing that the extensions, exemptions and variances addressed by the nondelegable sections of code are available to them. It is essential, however, that States leave the terms "Administrator", "Federal Register" and "Agency" unchanged, i.e., States may not substitute analogous State terms for these Federal terms. Similarly, States incorporating by reference must be careful to exclude these sections from blanket substitutions of State terms for Federal terms. For a more complete discussion of issues surrounding nondelegable sections, see Appendix J of the State Authorization Manual (SAM).

RCRA REVISION CHECKLIST 66: Land Disposal Restrictions; Correction to the
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		STATE ANALOG IS:			
FEDERAL REQUIREMENT	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	EQUIV- ALENT	MORE STRINGENT	BROADER IN SCOPE
PART 266 - STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES					
SUBPART C - RECYCLABLE MATERIALS USED IN A MANNER CONSTITUTING DISPOSAL					
APPLICABILITY					
delete the word "constituent" from the parenthetical phrase following "recyclable material"; add sentence exempting from regulation commercial fertilizers produced for the general public's use that contain recyclable materials	266.20(b)				
PART 268 - LAND DISPOSAL RESTRICTIONS					
SUBPART A - GENERAL					
PURPOSE, SCOPE AND APPLICABILITY					
substitute "restricted" for "prohibited"	268.1(c)				
remove paragraph	268.1(c)(3)				
remove paragraph	268.1(c)(4)				
wastes which are not subject to any provisions of Part 268	268.1(e)				

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FEDERAL REQUIREMENT	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:		
			EQUIV- ALENT	MORE STRINGENT	BROADER IN SCOPE
wastes generated by generators of less than 100 kg of hazardous waste and less than 1 kg of acute hazardous waste	268.1(e)(1)				
waste pesticides pursuant to 262.70	268.1(e)(2)				
wastes identified or listed as hazardous after November 8, 1984 for which EPA has not promulgated land disposal prohibitions or treatment standards	268.1(e)(3)				

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Guidance note: 268.5 is NOT DELEGABLE. States should see Note 3 at the beginning of this checklist regarding how to incorporate this section into their code.

PROCEDURES FOR CASE-BY-CASE EXTENSIONS TO AN EFFECTIVE DATE

replace "the following
requirements:" with
"the technical require-
ments of the following
provisions regardless
of whether such unit
is existing, new or a
replacement for lateral
expansion"

268.5(h)(2)

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Guidance note: 268.6 is NOT DELEGABLE. States should see Note 3 at the beginning of this checklist regarding how to incorporate this section into their code.

PETITIONS TO ALLOW LAND DISPOSAL
OF A WASTE PROHIBITED UNDER SUBPART C OF PART 268

amend paragraph
to read

"Immediately suspend
receipt of prohibited
waste at the
unit, and"

268.6(f)(1)

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WASTE ANALYSIS

add language to
indicate that
exemption from
prohibition is not
limited to extensions
under 268.5,
exemptions under
268.6 or a nationwide
capacity variance
under Subpart C

268.7(a)(3)

after "268.33(f)" add
parenthetical state-
ment including wastes
disposed of in units
other than landfills
or surface

impoundments

268.7(a)(4)

after "266.20(b)"
insert "regarding
treatment standards
and prohibition levels,";
insert "i.e.," preceding
"the recycler"

268.7(b)(8)

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disposal of recyclable material subject to 266.20(b)	268.7(c)(4)				
LANDFILL AND SURFACE IMPOUNDMENT DISPOSAL RESTRICTIONS					
specific requirements for generator if no practically available treatment for waste:	268.8(a)(2)				
prior to initial ship- ment, demonstration/ certification to Regional Administrator	268.8(a)(2)(i)				
demonstration and certification with initial shipment; certification with subsequent shipments; recordkeeping and record retention	268.8(a)(2)(ii)				
requirements for generator if there are practically available treatments for waste:	268.8(a)(3)				
prior to initial shipment, demonstra- tion/certification to Regional Administrator	268.8(a)(3)(i)				
1 demonstration and certification with initial shipment; certification with subsequent shipments; recordkeeping and retention	268.8(a)(3)(ii)				
add language requiring submission of new demonstration and certification to the receiving facility	268.8(b)(1)				

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insert ", for each initial shipment of waste," between "must" and "send"; add "(i) or 268.8(a)(3)(i)" after "268.8(a)(2)"; add sentence to end requiring submission of certification with subsequent shipments	268.8(c)(2)				
change "263.33(f)" to "268.33(f)"	268.8(d)				

SUBPART C - PROHIBITIONS ON LAND DISPOSAL

WASTE SPECIFIC PROHIBITIONS--CALIFORNIA LIST WASTES

replace "such disposal" with "such unit"	268.32(f)
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WASTE SPECIFIC PROHIBITIONS--FIRST THIRD WASTES					
change "K004 (nonwastewater)" to "K004 wastes specified in 268.43(a)"; change "K008 (nonwaste- waters)" to "K008 wastes specified in 268.43(a)"; remove "K015 wastewaters"; change "K021 (nonwastewater)" to "K021 wastes specified in 268.43(a)"; add "nonwastewaters specified in 268.43(a)" following "K025"; remove "K083 (nonwastewaters)"; add "nonwastewaters specified in 268.43(a)" following "K100"; add "(wastewater), K101 (nonwastewater, low arsenic subcategory - less than 1% total arsenic)." following "K101"; add "(wastewater), K102 (nonwastewater, low arsenic subcategory - less than 1% total arsenic)." following "K102"					
	268.33(a)				

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replace "are not applicable" with "have not been promulgated"; replace "unless the wastes are the subject of a valid demonstration and certification pursuant" with "unless a demonstration and certification have been submitted"	268.33(f)				
2 replace "extract or the waste" with "extract or the waste, or the generator may use knowledge of the waste"	268.33(g)				

SUBPART D - TREATMENT STANDARDS

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Guidance note: 268.44 is NOT DELEGABLE. States should see Note 3 at the beginning of this checklist regarding how to incorporate this section into their code.

VARIANCE FROM A TREATMENT STANDARD

replace "Assistant Administrator of the Office of Solid Waste and Emergency Response" with "Administrator"

268.44(h)

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SUBPART E - PROHIBITIONS ON STORAGE

PROHIBITIONS ON STORAGE OF RESTRICTED WASTES

reword paragraph regarding exemptions from land disposal

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prohibitions 268.50(d)

- 1 An error in the September 6, 1989 rule (54 FR 36967) makes it appear that the revisions to 268.8(a) include the removal of 268.8(a)(4). This was not the Agency's intent and 268.8(a)(4) remains in the Federal code as introduced by Revision Checklist 50.
- 2 See technical correction at 55 FR 23935, June 13, 1990.